

*Enforcement*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

Cornell-Dubilier Electronic Site
South Plainfield, New Jersey

Cornell-Dubilier Electronic, Inc., and
D.S.C. of Newark, Enterprises, Inc.,

Respondents

ADMINISTRATIVE ORDER ON
CONSENT

U.S. EPA Region II
Index No: II CERCLA-97-*****

Proceeding Under Section 104,
106(a), 107 and 122 of the
Comprehensive Environmental
Response, Compensation, and
Liability Act, as amended, 42
U.S.C. §§9604, 9606(a), 9607
and 9622

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the Respondents. The Respondents to this Order are as follows:

1. D.S.C. of Newark Enterprises, Inc., an entity incorporated in the State of New Jersey which has a place of business at 70 Blanchard Street, Newark, NJ 07105.
2. Cornell Dubilier Electronics, Inc., an entity incorporated in the State of Delaware which has a place of business at 1700 Route 23 North, Wayne, NJ 07470-7536.

This Order provides for the performance of the removal action described herein ("Removal Action") by Respondents in connection with the property located at the Cornell-Dubilier Electronic Site, South Plainfield, New Jersey ("Site"). This Order requires the Respondents to conduct the Removal Action to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

This Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C. EPA has notified the State of New Jersey ("State") of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Respondents' participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to

enforce the terms of the Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms.

The "Site" for the purposes of this Order consists of the parcel of real property designated as Block 256, Lot 1 on the municipal tax map in the Borough of South Plainfield, Middlesex County, New Jersey which is approximately 24 acres in size. A map of the Site is shown in Figure 1, attached.

II. PARTIES BOUND

This Order applies to and is binding upon EPA, and upon Respondents. Any change in ownership or corporate status of any Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter any such Respondent's responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by any one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by one or more other Respondents.

Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with the Order. Respondents shall be responsible for any noncompliance with this Order.

III. FINDING OF FACTS

1. The Site is bordered by commercial businesses, residences, wetlands and an unnamed tributary to the Bound Brook.
2. Approximately 540 persons reside within 0.25 miles of the Site, with the nearest residential homes being located on Spicer Avenue and on the opposite side of Hamilton Boulevard, less than 200 feet from the Site.
3. The Site is an active industrial park, with an estimated fifteen businesses currently occupying the on-site structures. Access to most of the occupied portion of the property is over an unpaved, stone/gravel roadway. A worn-out foot bicycle path at the rear of the property appears to be used for passage from the residential area on Spicer Avenue to Front Street/Metuchen Road. With the exception of the buildings, the public has generally unrestricted access to all open areas of this Site.
4. Ground water is a significant source of drinking water within a four-mile radius of the Site. Based on data from January, 1994, the nearest municipal drinking water well was reported to be located 0.6 miles north and down gradient of the Site. In 1994, there were an estimated 93 drinking water wells operating within four miles of the Site. Most of these wells appear to be either down gradient or cross gradient of the Site. It is estimated that 11,077 persons are served by wells located within 0.5 miles to 1 mile.
5. The depth to ground water beneath the Site is approximately 3 to 10 feet below the surface. Shallow ground water at the Site however, may discharge towards the adjacent creek.

6. Analyses of soil, water and sediment samples collected at the Site have confirmed the presence of numerous hazardous substances, including PCBs, arsenic, chromium, cadmium, and lead.
7. A variety of electrical components, including capacitors, coils, and transformers were discovered at various locations throughout the Site during soil sampling events, both above and below the ground surface. Some of these components were embossed with the name "Cornell-Dubilier."
8. On June 8, 1994, the U.S. EPA collected soil, sediment, and surface water samples from the Site. The following is a brief summary of the analytical data for those samples:
 - a. The PCB and lead concentrations were detected at concentrations up to up to 1,100 mg/kg and 2,200 mg/kg, respectively. Aroclor-1254 was also detected in soil at concentrations ranging from 6.9 mg/kg to 110 mg/kg, with the average concentration being 42.6 mg/kg. Heavy metals were detected in the soil at maximum concentration as follows: arsenic (25.7 mg/kg), cadmium (36.7 mg/kg), chromium (78.6 mg/l), copper (3,020 mg/kg), mercury (2.9 mg/kg), silver (26.7 mg/kg), and zinc (1,380 mg/kg).
 - b. A sediment sample collected from the stream near the rear of the property revealed the presence of Aroclor-1254 at 550 mg/kg. 1,2-dichloroethene (51 ug/kg), trichloroethene (120 ug/kg), and lead (552 mg/kg) were also detected in this same sediment sample.
 - c. Aroclor-1254 was detected thus far in surface water samples at levels up to up to 20 ug/l. Aroclor-1248, 1,2-dichloroethene, and trichloroethene were detected at this same location at 24 ug/l, 100 ug/l, and 2 ug/l, respectively. With respect to heavy metals, the maximum values detected in the surface water were: arsenic (15.6 ug/l), cadmium (14.5 ug/l), chromium (25.7 ug/l), copper (89.5 ug/l), lead (180 ug/l), mercury (0.23 ug/l), silver (3.8 ug/l), and zinc (994 ug/l).
9. On June 27 and 29, 1996, the U.S. EPA collected surface and subsurface soil samples from a roadway and a vacant field on the Site. On July 16, 1996 test pits were excavated in the vacant field and additional soil samples collected. The following is a brief summary of the analytical data for the above soil samples:
 - a. The maximum Aroclor-1254 concentration (51,000 mg/kg) detected in the surface soil was collected near the northeast corner of the fenced area, where electrical and transformer parts lie exposed in a swale. Additional surface soil samples collected within the fenced area indicated the presence of Aroclor-1254 at 98 mg/kg, 270 mg/kg, and 4,700 mg/kg.
 - b. The maximum Aroclor-1254 concentration detected on the surface of the Site roadway was 340 mg/kg. The average Aroclor-1254 detected on the surface of the Site roadway was 87.5 mg/kg. The maximum concentrations of Aroclor-1254 detected just beneath the unpaved stone/gravel layer of the Site roadway, ranged from 1,000 mg/kg to 22,000 mg/kg.

- c. Elevated levels of Aroclor-1254 (90 mg/kg to 3,000 mg/kg) were also detected at the surface, along and in the vicinity of, the foot/bike path at the rear portion of the Site. A sample collected in the floodplain of the stream, down slope from the exposed waste, contained 100 mg/kg of Aroclor-1254.
 - d. The average lead concentration detected on the surface of the Site roadway was 167.6 mg/kg. The maximum lead and cadmium concentrations were 340 mg/kg and 19 mg/kg, respectively. The maximum concentrations of lead detected just beneath the unpaved stone/gravel layer of the Site roadway ranged from 1,740 mg/kg to 7,460 mg/kg. Cadmium was also detected at a concentration of 373 mg/kg. Some of the highest levels of lead (1,740 mg/kg - 66,600 mg/kg) and cadmium (43 mg/kg - 271 mg/kg) were noted near the foot/bike path and the northeast corner of the fenced area, within the area where the exposed waste is present.
10. Several test pits excavated at the Site revealed stained subsurface soils, drum carcasses, electrical parts, mica-like chips, wood, and debris. Aroclor-1254 and lead were detected at concentrations as high as 1,900 mg/kg and 1,970 mg/kg, respectively, in samples collected from the test pits.
11. The Agency for Toxic Substances and Disease Registry (ATSDR) has issued a ATSDR Record of Activity (ARO) for this Site. In the The AROA, ATSDR concluded that "a potential health threat was present" at the Site PCBs are present at levels of public health concern anat the Site. ATSDR made the following recommendations:
- a. Conduct additional sampling to adequately characterize the site. Immediately stop exposure to PCBs in soil in the fenced area.
 - b. Prevent exposure to PCBs in surface soil at levels of public health concern.
 - bc. Prevent off-site migration of PCBs in dust and or soil.
 - c. Characterize the extent of contamination in the fenced area.
12. PCBs are readily absorbed into the body. They may persist in tissues for years after exposure stops. Chemical acne, dark patches on skin, burning eyes and skin, and unusual eye discharge have been reported by all routes of exposure. Generally, onset may not occur for months. These effects may last for months. Liver damage and digestive disturbance have been reported. PCBs may impair the function of the immune system and at high levels have been shown to produce cancer and birth defects in laboratory animals. Although PCBs are suspected as a human carcinogen, they have a very low potential for producing acute toxic effects. PCBs have the ability ability to bioaccumulate to concentrations that are toxic. A number of human studies indicate that PCBs can cross the placenta and locate in the fetus. PCBs also have the ability to concentrate in human breast milk.
13. Lead has the ability to accumulate in the body to levels which may eventually reach a point where symptoms and disability occur. Symptoms include decreased physical fitness, fatigue, sleep disturbance, aching bones, abdominal pains and decreased appetite. Lead is a powerful systemic poison. Ingestion and inhalation of large amounts may lead to seizures, coma, and death. Long-term exposure can result in severe damage to the blood-forming organs, and the nervous, urinary and reproductive systems.

14. A screening-level ecological risk assessment was completed on June 11, 1996 by U.S. EPA. A comparison of surface water and sediment contaminant levels to available screening values indicates that contamination of stream sediments adjacent to, and apparently associated with, the Site are present at levels that have been linked to adverse impacts in benthic organisms in other freshwater systems. This risk assessment also indicates that there is a potential for acute direct toxicity impacts to wildlife associated with the aquatic habitat for cadmium, copper, lead, PAHs, and PCBs. Due to the potential for these contaminants to enter the food chain, they may have the potential to impact higher trophic level receptors. The presence in the stream of herptiles and fish, and of mammalian and avian predators in the stream corridor, indicates that the exposure pathway from stream sediments to upper trophic level consumers appears to be complete.
15. Aroclor-1254, cadmium, copper, and lead have bioaccumulative properties. The Hazard Quotient (HQ), which is the ratio of Exposure Dose (ED) of a Contaminant of Concern (COC) to Benchmark Dose, indicates that individually both Aroclor-1254 and lead possess potential for ecological risk. Though in and of themselves copper and cadmium at the Site do not appear to exhibit potential for ecological risk, collectively they do which poses concern.
16. The screening-level ecological risk assessment indicates that very diverse and valuable habitat exist just upstream and downstream of the Site in the form of forested and emergent wetland, floodplain, old field and meadow, and undeveloped watershed in an otherwise heavily developed region. This physical arrangement could potentially have the affect of attracting ecological receptors into the areas of higher quality habitat, then exposing them to the contamination through either the use of the stream adjacent to the Site as a migration corridor or the transport of contaminants from adjacent to the Site to downstream habitats.
17. EPA has incurred response costs and will likely continue to incur response costs relative to this Site.
18. D.S.C. of Newark enterprises, Inc. ~~is is~~ the current owner of this Site.
19. ~~Cornell-Dubilier~~ Electronics, Inc. Operated a business at the Site from 1936 to 1962. During that period of time, Cornell-Dubilier handled and may have disposed of or arranged for the disposal of PCBs at the Site.

IV. CONCLUSIONS OF LAW AND DETERMINATION

Based on the Finding of Facts set forth above, and the Administrative Record relating to this matter, EPA has determined that:

1. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Each Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
6. The conditions present at the facility constitute an imminent and substantial endangerment to public health, welfare, or the environment. Factors that may be considered in evaluating conditions at a facility are set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP"). These factors include, but are not limited to, the following:
 - a. Actual or potential exposure to human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;
 - b. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; and
 - c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released, including rainfall and other surface water runoff events.
7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment with the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
8. The actions required by this Order are necessary to protect the public health, welfare, or the environment, and is not inconsistent with the NCP or CERCLA.

V. ORDER

1. Designation of Project Coordinator, and On-Scene Coordinator

Within five (5) days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated under this Order. Respondents shall submit the designated Project Coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of any Project Coordinator, within ten (10) days thereafter Respondents shall designate a different Project Coordinator.

The Project Coordinator shall be available for EPA to contact during all working days and be retained by Respondents at all times until completion of the work described in this Order.

EPA has designated Mr. Eric Wilson of the Removal Action Branch as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Order to the OSC at the U.S. Environmental Protection Agency, Region II, 2890 Woodbridge Avenue, Building 209, Edison, New Jersey 08837. The telephone number for Mr. Wilson is 908-906-6991.

EPA and Respondents shall have the right, subject to the immediately proceeding paragraph, to change their designated OSC or Project Coordinator. Respondents shall notify EPA seven (7) days before such a change is made. The initial notification may be orally made but it shall be followed by a written notice within three (3) days thereafter. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

2. Work to be Performed:

Respondents shall perform the following actions relating to the Site ("the Response Action"):

Phase 1

1. Pave all unpaved areas used as driveways, parking areas and walkways.
2. Limit access to areas of known contamination. This should include the use of physical barriers and warning signs.
3. Implement engineering controls to limit the migration of contaminants through surface water run-off to the unnamed tributary of the Bound Brook which borders the Site.
4. Maintain systems installed in accordance with items 1, 2 and 3 above.

Phase 2

4. Delineate the horizontal and vertical extent of soil contamination at the Site.
5. Identify the pathways of contaminant migration and impacts to surface water and sediments of the unnamed tributary of the Bound Brook which borders the Site.

2.1 Work Plan and Implementation

2.1.1 Phase 1 Work Plan

Within ~~fourteen (14)~~ fifteen (15) days of the effective date of this Order, Respondents shall submit to EPA for review and approval the draft Phase 1 Work Plan, in accordance with this Order, CERCLA, the NCP, EPA's guidance documents, other applicable federal and state laws and regulations, and the Conceptual Work Plan agreed to by the parties and attached hereto as Exhibit "A" ("Conceptual Work Plan"). The Work Plan shall provide a description of, and address the following:

- a. the components of and a time schedule for the commencement and completion of the Removal Action tasks set forth in this Order;
- b. the overall management plan, including identification of (or provisions for later advanced notification of) contractors and subcontractors and their respective responsibilities for performance of the Removal Action tasks set forth in this Order. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondents' choice of themselves to do the Removal Action. If EPA

disapproves of a selected contractor or the Respondents, Respondents shall retain a different contractor or notify EPA that it will perform the Removal Action itself within five (5) days following EPA's disapproval; and

- c. the curricula vitae of all professionals expected to participate in the Removal Action together with a description of the anticipated responsibilities and levels of effort of each of those professionals.

EPA either will approve, disapprove or require modification the SOP, or will require modifications thereto pursuant to Section VII (EPA Review of Submissions), below. Upon its approval by EPA, the SOP shall be deemed to be incorporated into and an enforceable part of this Order.

~~EPA shall, subject to the general parameters of the Conceptual Work Plan, will approve, disapprove, require revisions to, or modify the draft Work Plan, within five (5) business days of receipt of the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within ten (10) days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the time schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the time schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify EPA at least five (5) days prior to performing any on-site work pursuant to the Work Plan. Respondents shall not commence or undertake any removal activities on the Site, other than those approved in the Work Plan, without prior EPA approval.~~

Within fifteen (15) days after EPA's approval of the Phase 1 Work Plan, Respondents shall commence the work described in the EPA-approved Phase 1 Work Plan. The work required by the Phase 1 Work Plan shall be completed within thirty (30) days after the commencement of work.

2.1.2 Phase 2 Work Plan

Within thirty (30) days of the effective date of this Order, Respondents shall submit to EPA for review and approval the draft Phase 2 Work Plan, in accordance with this Order, CERCLA, the NCP, EPA's guidance documents, other applicable federal and state laws and regulations. The Work Plan shall provide a description of, and address the following:

- a. the components of and a time schedule for the commencement and completion of the Removal Action tasks set forth in this Order;
- b. the overall management plan, including identification of (or provisions for later advanced notification of) contractors and subcontractors and their respective responsibilities for performance of the Removal Action tasks set forth in this Order. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondents' choice of themselves to do the Removal Action. If EPA disapproves of a selected contractor or the Respondents, Respondents shall retain a different contractor or notify EPA that it will perform the Removal Action itself within five (5) days following EPA's disapproval; and
- c. the curricula vitae of all professionals expected to participate in the Removal Action together with a description of the anticipated responsibilities and levels of effort of each of those professionals.

EPA either will approve, disapprove or require modification the SOP, or will require modifications thereto pursuant to Section VII (EPA Review of Submissions), below. Upon its approval by EPA, the SOP shall be deemed to be incorporated into and an enforceable part of this Order.

Within fifteen (15) days after EPA's approval of the Phase 2 Work Plan, Respondents shall commence the work described in the EPA-approved Phase 2 Work Plan. The work required by the Phase 2 Work Plan shall be completed within ninety (90) days of the commencement of work.

At the time of completion of Work required by the EPA approved Work Plans, demobilization shall include sampling, if deemed necessary by EPA, and decontamination or proper disposal of protective clothing, investigation derived wastes, laboratory samples taken pursuant to this Order and any equipment or structures constructed to facilitate the Investigation.

2.2 Health and Safety Plan

Within ~~thirty (30)~~ fifteen (15) days of Respondents' receipt of notification from EPA that the Work Plan is acceptable, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. EPA shall submit any comments to the plan to Respondents within fifteen (15) business days of receipt of the plan. This plan shall be prepared in accordance with EPA's guidance document entitled "Standard Operating Safety Guides", OSWER Directive 9285.1-03, June 1992. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration regulations found at 20 CFR Part 1910. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the Removal Action.

2.3 Sampling and Analysis Plan (SAP)

Within thirty (30) days of the effective date of this Order, Respondents shall submit to EPA for review and approval a draft Sampling and Analysis Plan. The SAP shall include, but need not be limited to, the following:

- a. sampling strategies to be implemented to accomplish the tasks specified in this order;
- b. scale maps depicting property boundaries, surface features and proposed sample locations;
- c. detailed procedures and methods to be followed during the implementation of the SAP, including:
 - i. EPA-approved procedures for sampling and analysis of soil, water and waste samples collected at the Site;
 - ii. all sampling and analysis performed pursuant to this Consent Order shall conform to EPA Quality Assurance/Quality Control Guidance for Removal Activities EPA/540/G-90/004. Chain of Custody procedures shall conform with the EPA publication entitled "Test Methods for Evaluating Solid Waste" (SW-846, November 1986, or as updated).
- d. a QA/QC Plan and a description of Chain of Custody Procedures to be followed, which shall satisfy the following requirements:

- i. the QA/QC Plan shall be completed in accordance with Section 10 of SW-846, and "Guidance for Preparation of Combined Work/ Quality Assurance Project Plans for Environmental Monitoring" (U.S. EPA Office of Water Regulations and Standards, May, 1984);
- ii. respondent shall use QA/QC procedures in accordance with the QA/QC Plan submitted to and approved by EPA pursuant to this Consent Order and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual, as revised in November 1984, and the National Enforcement Investigations Center Manual for the Evidence Audit published in September 1981, and SW-846, for all sample collection and analysis activities conducted pursuant to this Consent Order; and
- iii. if performance of any subsequent phase of the Work required by this Consent Order requires alteration of the QA/QC Plan, Respondent shall submit to EPA for review and approval the proposed amendments to the QA/QC plan.

2.4 Reporting

Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order at the end of every month subsequent to the date of receipt of EPA's approval of the Work Plan until termination of the Order, unless otherwise directed by the OSC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the development anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

2.4 Final Report

Within sixty (60) days after completion of all activities required under this Order, the Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with the Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Report". The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Removal Action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Within sixty (60) days after completion of Work required by the EPA approved SOP, Respondents shall submit for EPA review and approval a Site Summary Report specifically setting forth the manner in which Respondents have complied with this Order and implemented the requirements set forth in the EPA-approved SOP. The Site Summary Report shall include all appropriate

documentation which substantiates, to EPA's satisfaction, Respondents' assertion that the Work required hereunder has been successfully completed in full satisfaction of this Order, including:

- a. synopsis of all Work performed under this Order;
- b. identification and a detailed description of all EPA-approved modifications to the Work Plans which occurred during Respondents' performance of the Work required under this Order;
- c. results of all sampling and analysis required by the SOP. All analytical results shall include QA/QC data and chain of custody records;
- d. a list of all contractors and subcontractors, utilized during the performance of the Work;
- e. a listing of quantities, types of materials and ultimate destination of materials handled on-Site or removed from Site for off-Site treatment or disposal;
- f. a sworn statement by authorized representatives of Respondents setting forth the following:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in and accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2.5 EPA Review of Submissions

EPA may approve, disapprove, require revisions to, or modify any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order. Except as otherwise expressly provided, if EPA disapproves or otherwise requires any such modifications, Respondents shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless EPA has specified a different time period in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondents shall address each of the comments and resubmit the plan, report, or other item with the required changes within the required time. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents a written statement to that effect. Notwithstanding the notice of disapproval, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submittal, except where EPA determines that such action, in light of the deficient portion, is impracticable.

If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the related costs from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work unilaterally.

All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, including all schedules contained therein, shall upon written approval by EPA, or upon development or amendment by EPA, be deemed to be incorporated by reference into and shall become an enforceable part of this Order.

3. Access to Property and Information

Respondents shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to the Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondents shall, upon request of the OSC, provide him with the results of all requested sampling, tests or other data generated by Respondents during implementation of this Order.

Where action under this Order is to be performed in areas owned or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within ten (10) days after the effective date of the Order. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for five years following completion of the Removal Action required by the Order. At the end of this five year period and 30 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the five year period at the written request of EPA.

Respondents may assert a business confidentiality claim pursuant to 40 CFR §2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents.

Respondents shall maintain a running log with respect to any documents relating to activities at the Site, such as sampling and analysis reports, chain of custody records and monitoring or engineering reports, which Respondents claim are privileged. Such log shall be kept on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege

or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondents shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege.

5. Compliance With Other Laws

Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e) and 40 CFR Section 300.415(i). In accordance with 40 CFR Section 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "The Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 93360.3-02, August 1991).

6. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately notify the OSC and the EPA Regional Emergency 24 Hour Hotline at 908-548-8730 of the incident or site conditions. If Respondents fail to respond, EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify EPA's National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures, if any, taken or to be taken to mitigate any release or endangerment caused or threatened by release and to prevent the recurrence of such release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103(c) and Section 304 of the Emergency Planning and community Right-To-Know Act of 1986, 42 U.S.C. 11001 et seq.

VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the Respondents' implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other removal activities undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC in writing.

VII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning the Order.

If the Respondents object to any EPA action taken pursuant to this Order, the Respondents shall notify EPA in writing of their objections within 10 days of such action, unless the objections have been informally resolved. Notification shall be made to:

Eric Wilson
U.S. Environmental Protection Agency
2890 Woodbridge Ave.
Edison, NJ 08837

and to:

Muthu S. Sundram
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 17th Floor
New York, NY 10007

EPA and Respondents shall, within 30 days from EPA's receipt of the Respondents' written objections, attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.

Any agreement reached by the parties pursuant to this Section shall be in writing, signed by both parties, and shall upon the signature by both parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to Respondents. The decision of EPA shall be incorporated into and become an enforceable element of this Order upon receipt by Respondents. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this section.

Following resolution of the dispute, as provided by this section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this Section shall constitute a final agency action giving rise to judicial review.

VIII. FORCE MAJEURE

Respondents agree to perform all requirements under this Order within the time limits established under the Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising entirely from causes beyond the control of the Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under the Order despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the work or increased cost of performance.

Respondents shall notify EPA orally within 48 hours, and in writing within five (5) days, after Respondents become or should have become aware of the event which constitutes a *force majeure*. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measure to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall waive any claim of *force majeure* by the Respondents.

If EPA determines a delay in performance of a requirement under this Order is or was attributable to a *force majeure*, the time period for performance of that requirement shall be deemed extended by EPA. Such an extension shall not alter Respondents' obligation to perform of complete other tasks required by the Order which are not directly affected by the *force majeure*.

IX. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondents fail to perform fully any requirement of this Order in accordance with the schedule established pursuant to the Order, Respondents shall each be liable as follows:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--|--------------------------------|
| \$ 1000 | 1st through 14th day |
| \$ 3,000 | 15th through 30th day |
| \$ 10,00 | 31st day and beyond |

Upon receipt of written demand from EPA, Respondents shall make payment to EPA within 14 days. Interest shall accrue on late payments as of the date payment is due which is the date of the violation or act of non-compliance triggering the stipulated penalties.

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligations to complete the performance of the work required under this Order.

Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of the Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

X. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order any actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA, including by issuing an Order under Section 106(a) of CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

XI. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

Except as expressly provided in Section XII - Covenant Not To Sue nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to the Order, for any liability such person may have under CERCLA, other statutes, or the common law, including, but not limited to, any claims of the United States for costs, damages and interest under sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claims to payment under sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. § 9606(b), 9611 & 9612, against the United States or the Hazardous Substances Superfund arising out of any action performed under this Order.

No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XII. COVENANT NOT TO SUE

Except as otherwise provided in this Order, upon issuance of the EPA notice referred to in Section XVII - Notice of Completion, EPA covenants not to sue Respondents for judicial

imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform removal activities agreed to in the Order except as otherwise reserved herein. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. This covenant not to sue extends only to the Respondents and does not extend to any other person. This covenant not to sue shall not take effect unless and until the written notice referred to in Section XVII is issued by EPA.

XIII. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). Nothing in this Order precludes the United States or Respondents from asserting any claims, causes of action or demands against any persons not parties to the Order for indemnification, contribution, or cost recovery.

XIV. INDEMNIFICATION

Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents' officers, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondents agree to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in this paragraph.

Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of constructive delay.

XV. INSURANCE

At least seven (7) days prior to commencing any on-site work under this Order, the Respondents shall secure, and shall maintain for the duration of the Order, comprehensive general liability insurance and automobile insurance with limits of \$1,000,000 dollars, combined single limit, naming as insured the United States. Within the same time period, the Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVI. MODIFICATIONS

Proposed modifications to any plan or schedule or the Work Plan may be approved orally by the OSC provided that any such modification shall be memorialized in writing within 5 days of such oral approval. The effective date of any such modification shall be the date of the OSC's oral approval. Any other requirements of this Order must be modified in writing by mutual agreement of the parties.

If Respondents seek permission to deviate from any approved plan or schedule or the Work Plan, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed Work Plan modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve the Respondents of their obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of the Order unless it is formally modified.

XVII. NOTICE OF COMPLETION

When EPA determines, after EPA's review of the Final Report, that all removal activities have been fully performed in accordance with this Order, with the exception of any continuing obligations required by the Order, EPA will provide a written notice signed by the Director of the Emergency and Remedial Response Division of EPA, Region II to the Respondents. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

XVIII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of the Order, Respondents shall remain bound to comply with all provisions of the Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XIX. EFFECTIVE DATE

This Order may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

This Order shall be effective 5 days after the Order is signed by the Regional Administrator of EPA, Region II.

The undersigned representative of _____ certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind the party he or she represents to this Order.

Agreed this _____ day of _____, 1997.

Signature: _____

Name: _____

Title: _____

So Ordered and Agreed this _____ day of _____ 1997.

By: _____

Jeanne M. Fox
Regional Administrator
Region II
U.S. Environmental
Protection Agency